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Cases, Regulations and Statutes

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property.

Leasehold property. Real property may be exchanged for a leasehold with 30 years or more to run. The like-kind statute does not provide guidance on exchanging leasehold interests.[9] However, the regulations issued in 1956 dealt explicitly with the issue.[10] Under those regulations, ". . . no gain or loss is recognized . . . [if] a taxpayer who is not a dealer in real estate exchanges city real estate for a ranch or farm, or exchanges a leasehold with 30-years or more to run for real estate, or exchanges improved real estate for unimproved real estate."

In a 2013 Tax Court decision, *VIP's Industries, Inc. & Subs. v. Commissioner,*[11] VIP operated several wholly-owned and majority-owned entities engaged in owning and operating hotels, motels, restaurants and hospitality ventures and also invested in real estate. The lease in question, which figured into a like-kind exchange, was originally a 33-year lease on real properties but, at the time of the exchange, the lease had 21 years and four months remaining. The taxpayer argued that the "30-year" requirement was only a "safe harbor" and did not preclude shorter terms for leases of real property under the regulations. The Tax Court, however, disagreed and denied like-kind exchange treatment, stating that it was settled law, not a mere "safe harbor."

A sale followed by a leaseback involving terms of 30 years or more constitutes a like-kind exchange.[12]

A conservation easement or development rights to maintain property in an undeveloped state around major cities have been held to be eligible for a like-kind exchange with a fee simple interest in real estate.[13] An exchange of land containing sand deposits has been held to be like-kind with other real estate even though the taxpayers owning the land had mined sand from the property.[14]

A purchaser's rights under an installment land contract were considered equivalent to a fee simple interest.[15]

The exchange of real property for other real property with the owner of the other real property required to construct a building to the transferor's specifications has qualified as a tax-free, like-kind exchange.[16] However, only the portion completed prior to the closing qualifies as like-kind.[17] In an earlier litigated case, the exchanger could not have the replacement property built on land already owned by the exchanger.[18]

ENDNOTES

[1] See Harl, "Like-Kind Exchanges: A Popular Option for Property Transfer," 11 *Drake J. of Agric. Law* 25 (2006).

[2] I.R.C. § 1031(a)(1).

[3] A like-kind exchange has failed where there was an immediate retransfer of the property. See Rev. Rul. 77-337, 1977-2 C.B. 305. See also Regals Realty v. Comm'r, 43 B.T.A. 194 (1940), *aff'd*, 127 F.2d 931 (2d Cir. 1942); Ltr. Rul. 200440002, June 14, 2004.

[4] See generally 4 Harl, *Agricultural Law* § 27.04 (2016); 1 Harl, *Farm Income Tax Manual* § 2.07 (2016). See also Harl, note 1 *supra*.

[5] See Bundren v. Comm'r, T.C. Memo. 2001-2, *aff'd,* 2001-1 U.S. Tax Cas. (CCH) ¶ 50,331 (10th Cir. 2002).

[6] Moore v. Comm'r, T.C. Memo. 2007-134 (taxpayer argument that vacation property was expected to increase in value and, therefore, was "held for investment" failed).

[7] See Rev. Proc. 2008-16, 2008-1 C.B. 547. See also I.R.C. §§ 280A(d)(2), 280A(d)(3), 280A(d)(4).

[8] Treas. Reg. § 1.1031(a)-1(c).

[9] I.R.C. § 1031. See I.R.C. § 1001.

[10] Treas. Reg. § 1.1031(a)-1(c).

[11] T.C. Memo. 2013-157.

[12] Rev. Rul. 60-43, 1960-1 C.B. 687.

[13] See e.g., Ltr. Rul. 200201007, Oct. 2, 2001 (exchange of conservation easement for ranchland).

[14] Beeler v. Comm'r, T.C. Memo. 1997-73.

[15] Starker v. United States, 602 F.2d 1341 (9th Cir. 1979).

[16] Ltr. Rul. 9413006, Dec. 20, 1993.

[17] *Id*.

[18] Bloomington Coca-Cola Bottling Co. v. Comm'r, 189 F.2d 14 (7th Cir. 1951).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

CATTLE. The plaintiff incurred damage to the plaintiff's truck when it struck several cattle which were owned by the defendant and which had escaped from their pasture. The evidence indicated that the cattle had broken through a chained gate. The plaintiff sued for damages, alleging either that the defendant was negligent in maintaining the gate or that the defendant was statutorily liable for violating Wis. Stat. § 172.015 which prohibits allowing cattle to run at large on public highways. The defendant testified as to the efforts taken to secure the cattle and maintain the fence and gates. Because the plaintiff did not present any contradicting evidence, the court held that the defendant was not negligent. The court noted that Wis. Stat. § 172.015 provides that "No livestock shall run at large on a highway at any time except to go from one farm parcel to another. If the owner or keeper of livestock knowingly permits livestock to run at large on a highway, except when going from one farm parcel to another, and after notice by any peace officer fails to remove the livestock from the highway, the owner or keeper may be fined not more than $200." Because there was no evidence that the defendant had actual knowledge of the cattle on the highway and had not been notified by a peace officer that the cattle were loose, the defendant did not violate Wis. Stat. § 172.015. The court noted a failure of the plaintiff's counsel to adequately discuss the legal issues involved in the case. **Kurtz v. Marek, 2016 Wisc. App. LEXIS 124 (Wisc. Ct. App. 2016)**.

BANKRUPTCY

CHAPTER 12

EXECUTORY CONTRACTS. The debtor was a farmer and owner of an auto repair shop. The auto repair shop was leased to a third party under an oral lease. The debtor owned farm land and also leased farmland from an unrelated party and the estate of the debtor's mother. One of the leases was written but, in accordance with the practice in the area, the farm leases were oral. The debtor sought to assume all the leases and a creditor objected. The debtor testified as to the terms of the oral leases which had been in effect for several years. The debtor also had contracts with the Farm Service Agency for farm program payments. The debtor provided uncontroverted testimony that all the leases and contracts would benefit the bankruptcy estate. Thus, the court held that the debtor could assume all the contracts over the objection of the creditors. ***In re* Miller, 2016 Bankr. LEXIS 1046 (Bankr. D. Mont. 2016)**.

FEDERAL FARM PROGRAMS

FARM LOANS. The CCC has adopted as final regulations which amend the Farm Storage Facility Loan Program (FSFL) regulations to add eligibility for portable storage structures, portable equipment, and storage and handling trucks, and to reduce the down payment and documentation requirements for a new "microloan" category of FSFLs up to $50,000. These changes are intended to address the needs of smaller farms and specialty crop producers. **81 Fed. Reg. 25587 (April 29, 2016)**.

FEDERAL ESTATE AND GIFT TAXATION

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death and that during the decedent's lifetime, the decedent made no taxable gifts. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201617003, Jan. 14, 2016; Ltr. Rul. 201618004, Jan. 22, 2016; Ltr. Rul. 201618005, Jan. 14, 2016; Ltr. Rul. 201618006, Jan. 15, 2016; Ltr. Rul. 201618009, Jan. 12, 2016.**

TRUSTS. The taxpayer was a trustee of a trust which failed to pay taxes over several years. The IRS sent the trustee a lien notice and the trustee requested a collection due process hearing to appeal the lien notice. The trustee did not challenge the amount of tax involved but argued that the trust was not subject to levy under I.R.C. § 6331. The trustee reasoned that the Internal Revenue Code was not "positive law" but only a restatement of enacted statutes. Thus, the definition of "person" in I.R.C. § 6331 must be interpreted in light of the prior law under Section 3310 of the 1939 Internal Revenue Code which was created by statute. Under the 1939 law, a trust was not a person. The court rejected this argument as frivolous in that the Internal Revenue Code is positive law in that it was enacted and amended by Congress. The court held that I.R.C. § 6331 includes trusts in its definition of persons subject to levy. **Wilson Heirs Trust v. Comm'r, T.C. Memo. 2016-76**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued a revenue procedure which provides the List of Automatic Changes to which apply the automatic change procedures in *Rev. Proc. 2015-13, 2015-1 C.B. 419, as clarified and modified by Rev. Proc. 2015-33, 2015-1 C.B. 1067*. Among the list is a change where a taxpayer wants to change its method of accounting for loans received from the Commodity Credit Corporation from including the loan amount in gross income for the taxable year in which each loan is received to treating each loan amount as a loan **Rev. Proc. 2016-29, I.R.B. 2016-21**.

AMERICAN OPPORTUNITY CREDIT. The taxpayer was enrolled full time at a university during 2010 and 2011. In November 2010 the taxpayer enrolled for the spring 2011 classes and the university billed the taxpayer for the 2011 classes based on the classes listed. In January 2011, the university billed for additional classes. Later in January 2011, the taxpayer's university bills were paid by student loan proceeds granted at that time. The university filed Form 1098-T, *Tuition Statement*, for 2011 and included only the January 2011 charges in Box 2, "Amounts billed for qualified tuition and related expenses." The taxpayer filed on the cash basis and claimed the American Opportunity Credit based on the full tuition and fees for 2011. The IRS disallowed the credit based on the university's 2011 Form 1098-T. The court held that the credit was improperly denied because the 2011 tuition was not paid until the loan proceeds were applied to the tuition in January 2011. **Terrell v. Comm'r, T.C. Memo. 2016-85**.

APPLICABLE FEDERAL INTEREST RATES. The IRS has adopted as final regulations that provide the method to be used to adjust the applicable federal rates (AFRs) under I.R.C. § 1288 for tax-exempt obligations and the method to be used to determine the long-term tax-exempt rate and the adjusted federal long-term rate under I.R.C. § 382. For tax-exempt obligations, the final regulations affect the determination of original issue discount under I.R.C. § 1273 and of total unstated interest under I.R.C. § 483. In addition, the final regulations affect the determination of the limitations under I.R.C. §§ 382 and 383 on the use of certain operating loss carryforwards, tax credits, and other attributes of corporations following ownership changes. I.R.C. § 1274(d) directs the Secretary to determine the AFRs that are used for determining the imputed principal amount of debt instruments to which I.R.C. § 1274 applies, computing total unstated interest on payments to which I.R.C. § 483 applies, and other purposes. Under I.R.C. § 1274(d)(1), the AFR is: (1) In the case of a debt instrument with a term not over three years, the Federal short-term rate; (2) in the case of a debt instrument with a term over three years but not over nine years, the Federal mid-term rate; and (3) in the case of a debt instrument with a term over nine years, the Federal long-term rate. I.R.C. §§ 1274(d)(2) and (3) provide special rules for selecting the appropriate AFR in specified circumstances. I.R.C. § 1274(d)(2) provides that, in the case of a sale or exchange, the AFR shall be the lowest AFR in effect for any month in the three calendar month period ending with the first calendar month in which there is a binding contract in writing for the sale or exchange. I.R.C. § 1274(d)(3) requires that options to renew or extend be taken into account in determining the term of a debt instrument. During each month, the Treasury Department determines the AFRs that will apply during the following calendar month based on the average market yield of outstanding marketable obligations of the United States with appropriate maturities. See Treas. Reg. §1.1274-4(b). The IRS publishes the AFRs (reproduced in the *Digest*) and adjusted AFRs for each month in the Internal Revenue Bulletin. I.R.C. § 1288(b)(1) provides that, in applying I.R.C. § 483 or I.R.C. § 1274 to a tax-exempt obligation, under regulations prescribed by the Secretary, appropriate adjustments shall be made to the AFR to take into account the tax exemption for interest on the obligation. In the case of a corporation that has undergone an ownership change described in I.R.C. § 382(g), I.R.C. § 382 places an annual limit (the I.R.C. § 382 limitation) on the amount of the corporation's taxable income that may be offset by certain net operating loss carryforwards and built-in losses, and I.R.C. § 383 places a limit, determined by reference to the I.R.C. § 382 limitation, on the amount of the corporation's income tax liability that may be offset by certain tax credits and other tax attributes. Under I.R.C. § 382(b)(1), the I.R.C. § 382 limitation generally equals the product of the value of the stock of the corporation immediately prior to the ownership change and the long-term tax-exempt rate. I.R.C. § 382(f)(1) defines the long-term tax-exempt rate as the highest of the adjusted federal long-term rates in effect for any month in the three calendar month period ending with the calendar month in which the ownership change occurs. I.R.C. § 382(f)(2) provides that the term "adjusted Federal long-term rate" means the federal long-term rate determined under I.R.C. § 1274(d), except that I.R.C. §§ 1274(d)(2) and (3) shall not apply, and such rate shall be properly adjusted for differences between rates on long-term taxable and tax-exempt obligations. **T.D. 9763, 81 Fed. Reg. 24482 (April 26, 2016).**

CHARITABLE DEDUCTIONS. The taxpayer was a limited liability company taxed as a partnership. The taxpayer owned and operated two golf courses it developed on its own land. The golf courses were created using loans for which the golf courses were collateral. The loan agreements prohibited the enforcement of any oral agreements concerning the property without the written consent of the lenders. The taxpayer granted a conservation easement on the two courses to a non-profit corporation. Seven months after the transfer of the easement, the secured lenders both consented to subordinate their loans to the conservation easement holder. The IRS argued that the late subordination agreements violated Treas. Reg. § 1.170A-14(g)(2) which requires any subordination agreements to be effective on the date of the easement transfer. The taxpayer attempted to prove that the lenders had orally subordinated their loans just before the easement transfers but the court rejected that claim because the loan agreements prohibited such agreements. Thus, the court held that the IRS properly denied any deduction for the transfer of the easement because, as of the date of the easement, the loans were not subordinated and the easement could be defeated by enforcement of the loans. **RP Golf, LLC v. Comm'r, T.C. Memo. 2016-80**.

The taxpayers, husband and wife, owned parcels of rural property zoned for agricultural use. The taxpayers transferred a conservation easement on both parcels to a non-profit organization which held several conservation easements on neighboring property. The easement contained an extinguishment provision determining the division of proceeds in the event of a sale or other transfer. The conservation easement grantee's share was determined by the ratio of the allowed charitable deduction over the fair market value of the parcels without the easement. Treas. Reg. 1.170A-14(g)(6)(ii) provides that the grantee share is to be determined by the ratio of the value of the easement over the fair market value of the land without the easement. Because the easement's calculation allowed for the grantee to receive a zero interest if no charitable deduction was allowed, the court held that the easement was not granted in perpetuity and was not eligible for a charitable deduction. **Carroll v. Comm'r, 146 T.C. No. 13 (2016)**.

EMPLOYEE EXPENSES. The taxpayer worked for a retail clothing company which required its salespeople to wear the company's clothing while working at the store. The taxpayer claimed a deduction for the cost of the clothing as unreimbursed employee expenses. The IRS denied the deduction. The court examined three criteria to determine whether the cost of clothing was deductible as an ordinary and necessary business expense: (1) the clothing is required or essential in the taxpayer's employment; (2) the clothing is not suitable for general or personal wear; and (3) the clothing is not so worn. Although the clothing was required to be worn by the employer, the court upheld the denial of the deduction because the clothing was suitable for general and personal wear. **Barnes v. Comm'r, T.C. Memo. 2016-79**.

HEALTH INSURANCE. The IRS has published information for employers on filing of health insurance information returns. For self-insured employers, applicable large employers or health coverage providers, the deadlines to file information returns with the IRS are approaching. The deadline to provide information returns to employees or responsible individuals was March 31 but for some the deadline to file them with the IRS is just over one month away. This chart provides a reminder about the upcoming filing requirements and the 2016 deadlines:

Action	Reporting Due Dates in 2016 for…		
	Applicable Large Employers – Including Those That Are Self-Insured	Self-insured Employers That Are Not Applicable Large Employers	Coverage Providers – Other Than Self-Insured Applicable Large Employers*
File 1094-B and 1095-B with the IRS	Not Applicable **	Paper: May 31 E-file: June 30*	Paper: May 31 E-file: June 30*
File 1095-C and 1094-C with the IRS	Paper: May 31 E-file: June 30*	Not Applicable **	Not Applicable **

*If an employer files 250 or more Forms 1095-B or Forms 1095-C, the employer must electronically file them with the IRS. Electronically filing ACA information returns requires an application process separate from other electronic filing systems. Additional information about electronic filing of ACA Information Returns is on the Affordable Care Act Information Reporting (AIR) Program page on IRS.gov and in Publications 5164 and 5165.

Applicable large employers that provide employer-sponsored self-insured health coverage to non-employees may use either Forms 1095-B or Form 1095-C to report coverage for those individuals and other family members. This chart applies only for reporting in 2016 for coverage in 2015. In future years, the due dates will be different; see IRS Notice 2016-04 for information about these dates. **Health Care Tax Tip 2016-47.

INFORMATION RETURNS. The IRS has announced that it will not impose penalties under I.R.C. §§ 6721 or 6722 on eligible educational institutions with respect to Forms 1098-T, *Tuition Statement*, required to be filed and furnished for the 2016 calendar year under I.R.C. § 6050S if the institution reports the aggregate amount billed for qualified tuition and related expenses on Form 1098-T instead of the aggregate amount of payments received as required by section 212 of the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. No. 114-113, 129 Stat. 2242 (2015). **Ann. 2016-17, I.R.B. 2016-20**.

INNOCENT SPOUSE RELIEF. The taxpayer was self-employed and the taxpayer's spouse handled the accounting for the business. The spouse also arranged for the preparation and filing of the couple's tax returns. The 2003 tax return was prepared and signed by the taxpayer but the spouse did not file the return or pay any of the taxes owed. The 2004 tax return was similarly prepared and filed but the return falsely claimed that estimated tax payments had been made so taxes were also unpaid for 2004. The spouse died during 2005 and the taxpayer filed the 2005 return but failed to pay the self-employment taxes owed. After the spouse's death, the taxpayer learned that the 2003 return was not filed and filed a new return but did not pay the taxes. The IRS assessed penalties and interest for the 2003 return and the taxpayer sought innocent spouse relief only from the interest and penalties up to the time the new return was filed. The IRS initially argued that innocent spouse relief was not available for penalties and interest but the court rejected that argument. The IRS also argued that innocent spouse relief under *Rev. Proc. 2013-34, 2013-2 CB. 397* was not available because the taxes owed were attributable only to the taxpayer's income. The court also rejected this argument in that the taxpayer was not seeking relief from the taxes owed but only the penalties and interest resulting from the former spouse's failure to file and pay the taxes. The court noted the exception in *Rev. Proc. 2013-34, § 4.01(7)*, that the attribution requirement could be ignored where the failure to file and pay taxes was due to the fraud of the non-requesting spouse. The court then discussed the seven factors of *Rev. Proc. 2013-34* and found the majority were neutral as to granting relief. However, the court granted relief because the taxpayer had no knowledge of the failure to file and pay the 2003 taxes and it was equitable to provide relief from the penalties and interest up to the time the taxpayer filed a new return. **Boyle v. Comm'r, T.C. Memo. 2016-87**.

MOVING EXPENSES. The taxpayer owned a business which was subject to condemnation through eminent domain by a state agency for expansion of a highway. The taxpayer received payments from the state and federal sources and all the payments were used to relocate the business. The federal payments were subject to the federal Relocation Act in which 42 U.S.C. § 4636 provides that funds received under the Act are not income for purposes of I.R.C. § 61. Thus, the IRS ruled that (1) the relocation payments were not taxable income to the taxpayer, (2) the taxpayer cannot deduct the expenses of the relocation to the extent of the payments made for the costs of the relocation, and (3) the taxpayer cannot assign any basis under I.R.C. § 1012 to substitute equipment acquired to replace non-movable equipment and leasehold improvements to the extent such costs are reimbursed by the payments. **Ltr. Rul. 201617002, Jan. 20, 2016**.

PARTNERSHIPS

DISREGARDED ENTITIES. The IRS has issued proposed regulations that clarify the employment tax treatment of partners in a partnership that owns a disregarded entity. The regulations also affect partners in a partnership that owns a disregarded entity. Treas. Reg. § 301.7701-2(c)(2)(i) states that, except as otherwise provided, a business entity that has a single owner and is not a corporation under Treas. Reg. § 301.7701-2(b) is disregarded as an entity separate from its owner (a disregarded entity).

However, Treas. Reg. § 301.7701-2(c)(2)(iv)(B) provides that an entity that is a disregarded entity is treated as a corporation for purposes of employment taxes imposed under subtitle C of the Code. Therefore, the disregarded entity, rather than the owner, is considered to be the employer of the entity's employees for purposes of employment taxes imposed by subtitle C. While Treas. Reg. § 301.7701-2(c)(2)(iv)(B) treats a disregarded entity as a corporation for employment tax purposes, this rule does not apply for self-employment tax purposes. Specifically, Treas. Reg. § 301.7701-2(c)(2)(iv)(C)(2) provides that the general rule of Treas. Reg. § 301.7701-2(c)(2)(i) applies for self-employment tax purposes. The regulations apply this rule in the context of a single individual owner by stating that the owner of an entity that is treated in the same manner as a sole proprietorship is subject to tax on self-employment income. Treas. Reg. § 301.7701-2(c)(2)(iv)(D), also includes an example that specifically illustrates the mechanics of the rule. In the example, the disregarded entity is subject to employment tax with respect to employees of the disregarded entity. The individual owner, however, is subject to self-employment tax on the net earnings from self-employment resulting from the disregarded entity's activities. The regulations do not include a separate example in which the disregarded entity is owned by a partnership. Even though the regulations set forth a general rule that an entity is disregarded as a separate entity from the owner for self-employment tax purposes, some taxpayers may have read the current regulations to permit the treatment of individual partners in a partnership that owns a disregarded entity as employees of the disregarded entity because the regulations did not include a specific example applying the general rule in the partnership context. Under this reading, which the IRS says was not intended, some taxpayers have permitted partners to participate in certain tax-favored employee benefit plans. The Treasury Department and the IRS note that the regulations did not create a distinction between a disregarded entity owned by an individual (that is, a sole proprietorship) and a disregarded entity owned by a partnership in the application of the self-employment tax rule. Rather, Treas. Reg. § 301.7701-2(c)(2)(iv)(C)(2) provides that the general rule of Treas. Reg. § 301.7701-2(c)(2)(i) applies for self-employment tax purposes for any owner of a disregarded entity without carving out an exception regarding a partnership that owns such a disregarded entity. In addition, the Treasury Department and the IRS do not believe that the regulations alter the holding of *Rev. Rul. 69-184, 1969-1 CB 256*, which provides that: (1) *bona fide* members of a partnership are not employees of the partnership within the meaning of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages, and (2) such a partner who devotes time and energy in the conduct of the trade or business of the partnership, or in providing services to the partnership as an independent contractor, is, in either event, a self-employed individual rather than an individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. The rule that the entity is disregarded for self-employment tax purposes applies to partners in the same way that it applies to a sole proprietor owner. Accordingly, the partners are subject to the same self-employment tax rules as partners in a partnership that does not own a disregarded entity. The proposed regulations clarify that a disregarded entity that is treated as a corporation for purposes of employment taxes imposed under subtitle C of the Code is not treated as a corporation for purposes of employing its individual owner, who is treated as a sole proprietor, or employing an individual that is a partner in a partnership that owns the disregarded entity. Rather, the entity is disregarded as an entity separate from its owner for this purpose. Existing regulations already provide that the entity is disregarded for self-employment tax purposes and specifically note that the owner of an entity treated in the same manner as a sole proprietorship under Treas. Reg. § 301.7701-2(a) is subject to tax on self-employment income. The proposed regulations apply this existing general rule to illustrate that, if a partnership is the owner of a disregarded entity, the partners in the partnership are subject to the same self-employment tax rules as partners in a partnership that does not own a disregarded entity. While the proposed regulations provide that a disregarded entity owned by a partnership is not treated as a corporation for purposes of employing any partner of the partnership, these regulations do not address the application of *Rev. Rul. 69-184* in tiered partnership situations. The Treasury Department and the IRS request comments on the appropriate application of the principles of *Rev. Rul. 69-184* to tiered partnership situations, the circumstances in which it may be appropriate to permit partners to also be employees of the partnership, and the impact on employee benefit plans (including, but not limited to, qualified retirement plans, health and welfare plans, and fringe benefit plans) and on employment taxes if *Rev. Rul. 69-184* were to be modified to permit partners to also be employees in certain circumstances. In order to allow adequate time for partnerships to make necessary payroll and benefit plan adjustments, the proposed regulations will apply on the later of: (1) August 1, 2016, or (2) the first day of the latest-starting plan year following May 4, 2016, of an affected plan (based on the plans adopted before, and the plan years in effect as of, May 4, 2016) sponsored by an entity that is disregarded as an entity separate from its owner for any purpose under Treas. Reg. § 301.7701-2. For these purposes, an affected plan includes any qualified plan, health plan, or section 125 cafeteria plan if the plan benefits participants whose employment status is affected by these regulations. **T.D. 9766, 81 Fed. Reg. 26693 (May 4, 2016)**.

INSURANCE

COVERAGE. The plaintiff insurance company sought a declaratory judgment that a general liability policy issued to the defendants did not cover an accident on their farm. The policy covered "any other person while operating farm tractors, self-propelled farm machinery, or animal drawn farm vehicles or implements, in any of the named insured's operations covered by this policy and with the permission of the insured." The accident involved the defendants' son and girl friend who died while operating a "four-wheeler" on the farm during a pleasure drive. The court noted that the insurance policy did not define "self-propelled farm machinery" and held that a four-wheeler was self-propelled farm machinery. The court held that the phrase "any of the named insured's operations covered by this policy" was ambiguous and there remained significant issues of fact as to the use of the four-wheeler by the decedent and whether the decedent was performing any farm task at the time of the accident. Therefore, the court held that summary judgment was inappropriate. **Southern Farm Bureau Cas. Ins. Co. v Hammond, 2016 U.S. Dist. LEXIS 38555 (W.D. Ark. 2016)**.

CROP INSURANCE. The plaintiff purchased Group Risk Income Protection (GRIP) crop insurance on a corn crop from the defendant. The policy provided that an indemnity payment would be made if the county corn yield for a crop year was more than 10 percent less than the expected yield. When the policy was purchased, the defendant's local agent told the plaintiff that the yield would be based on the number of planted acres. However, the policy calculation was to be based on harvested acres. At the end of the crop year, the agent informed the plaintiff that the county corn yield was more than 10 percent less than the expected yield and told the plaintiff that an indemnity payment of over $100,000 would be made. In expectation of the payment, the plaintiff quit farming and leased out the farm land. However, the agent was still using the wrong calculation factor and the plaintiff was eventually denied any payment by the defendant. The plaintiff sued for negligent and intentional misrepresentation. The court looked at two factors (1) whether the plaintiff was deemed to have at least constructive knowledge of the terms of the policy and, if so, (2) whether the plaintiff reasonably relied on the agent's erroneous statements. The court held that the plaintiff was charged with at least constructive knowledge of the policy terms because the crop insurance policy is regulated by federal law and regulations and, under *Fed. Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947)*, insureds are charged with the knowledge of United States laws. The court also held that the plaintiff did not reasonably rely on the agent's erroneous representations because the insurance policy contained sufficient information for showing that the representations were incorrect. **Buckman v. Nau Country Ins., Co., 2016 U.S. Dist. LEXIS 35203 (W.D. Ky. 2016)**.

NUISANCE

RIGHT-TO-FARM. The defendant operated a slaughterhouse and retail meat market business within the boundary of the plaintiff village. The village issued 10 citations for various violations of village ordinances, including obstructing traffic, street pollution, harboring noisy animals, and unattended idling vehicles. The defendant appealed the citations, arguing that they were prohibited by the Wisconsin right-to-farm statute, Wisc. Stat. § 823.08. The court held that the right-to-farm law protects "agricultural use" and "agricultural practice" only from nuisance actions for damages or abatement. The court noted that nothing in the right-to-farm law strips municipalities of any authority they may have to impose fines, including authority they may have to regulate an agricultural use pursuant to their police powers. The court rejected the argument that the fines imposed were an indirect attempt to abate a nuisance; therefore, the court held that the citations were not prohibited by the right-to-farm statute. **Village of Black Earth v. Black Earth Meat Market, LLC, 2016 Wisc. App. LEXIS 170 (Wisc. Ct. App. 2016)**.

WORKERS' COMPENSATION

AGRICULTURAL EMPLOYEE. The plaintiff was employed at a horse facility as a horse trainer and also performed maintenance on the facility and horses, and other common tasks for a horse stable. The plaintiff was injured while riding a horse to demonstrate the horse's training level. The horse facility raised and trained racehorses during their early training but did not train horses for racing and did not own racehorses. The plaintiff filed a claim for workers' compensation but the horse facility did not carry workers' compensation insurance. Administrative appeal decisions ruled that the plaintiff was employed as an agricultural worker and was not covered by workers' compensation under Ky Rev. Stat. § 342.650(5). The court noted that the workers' compensation statute, Ky. Rev. Stat. § 342.0011(18), defined agriculture as "the operation of farm premises, including . . . the raising of livestock for food products and for racing purposes." The court cited two cases which held that the "feeding, housing, caring for, and training of horses, even if owned by another individual than the farm owner, has been held to be an agricultural activity." The court noted that the end use of the horses, either as racehorses or lesson horses, did not alter the finding that the plaintiff was engaged in agricultural labor in caring for and training the horses at the facility; therefore, the plaintiff was an agricultural employee exempt from workers' compensation coverage. The opinion is designated as not for publication. **Hanawalt v. Brown, 2016 Ky. Unpub. LEXIS 14 (Ky. 2016)**.